BAIL SLIP

Crl.R.C.No.607 of 2004

The Revision Petitioner/Accused Viz., Devendran was directed t be released on bail by the order of this Court dated 31.3.04 and made in Crl.MP.No.3817/04 in crl.R.C.No.607/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.12.2005

Coram

The Honourable Mr.Justice K.N.BASHA

Criminal Revision Case No.607 of 2004

Devendran ... Petitioner/Accuse

vs.

State by Sub-Inspector of Police
Hasthampatti police station
Salem District (Cr.No.828/96) ... Respondent/Complainan

Criminal Revision filed under Section 397 read with 401 c Criminal Procedure Code against the judgment dated 20.2.2004 an made in C.A.No.10 of 2003 on the file of the Additional Distric and Sessions Judge, (Fast Track Court No.I) Salem, confirming th conviction and sentence imposed on the petitioner/accused i C.C.No.717 of 1999 on the file of the Judicial Magistrate No.3 Salem as per judgment dated 6.1.2003.

For petitioner : Mr.S.Ashok Kumar,
Senior Counsel, for
Mr.R.Jothimanian

For Respondent : Mr.V.Jayaprakash Narayanan
Govt. Advocate (Crl. Side)

O R D E R

The Revision Petitioner is a qualified engineer, who suffere concurrent findings of conviction and sentence imposed on him by th courts below, for the alleged offences punishable under Section 468, 471 and 420 read with 511, I.P.C.

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2. The trial court, by judgment dated 6.1.2003, passed i C.C.No.717/1999, convicted the Revision Petitioner/ accused ar sentenced him under Section 468 I.P.C. to undergo one year Simpl Imprisonment and to pay a fine of Rs.1,000/-, in default, to underg one month Simple Imprisonment, under Section 471 I.P.C., sentence him to one year Simple Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for one month and unde Section 420 read with 511 I.P.C., he has been convicted ar sentenced to six months'Simple Imprisonment and to pay a fine o Rs.1,000/-, in default to undergo one month Simple Imprisonment. Th lower appellate court in the judgment dated 20.2.2004 rendered i Crl.Appeal No.10/2003 confirmed the conviction and sentenc imposed on the Revision Petitioner/accused, by the trial court Hence, this Criminal Revision Case.

3. The main accusation alleged against the Revisio Petitioner/accused is that on 21.8.1996, the accused prepared false appointment order, Ex.P1, appointing him as B.E. Graduat (Apprenticeship) at Anna Transport Corporation, Johnsonpet, Salem by forging the signature of the witness, P.W.3, who is the Deput Manager of the Head Office at Salem and utilised the sai appointment order as a genuine one and presented the same o 21.8.1996 at 11.00 a.m. to P.W.1, the Branch Manager of Ann Transport Corporation, Johnsonpet and attempted to cheat th witness, P.W.1, by convincingly inducing him and to allow him t join in the Department as an B.E. Graduate (Apprenticeship), as pe the order issued by the witness Sathasivam, P.W.3 and thereb committed the offence punishable under Sections 468, 471 and 42 read with 511 I.P.C.

4. According to the prosecution, the accused is a qualifie engineer holding B.E. degree. He had given an application to th Anna Transport Corporation, Salem for appointment as B.E. Graduat (Apprenticeship). He had submitted his application for the abov said appointment. Thereafter, the accused made a representatio through the Chief Minister's cell, Government of Tamil Nadu, o 25.7.1996, Ex.P4, to the General Manager, Anna Transpor Corporation, Salem. The Anna Transport Corporation, on receipt o the representation of the accused, through the Chief Minister' cell, gave a reply to the accused through Ex.P5, on 3.8.1996. I is stated in Ex.P5 reply, sent to the accused that they are takin action on the representation of the accused, dated 25.7.1996 an they would consider the case of the accused as and when the vacanc arises.

5. It is the further case of the prosecution that the accuse on 21.8.1996 went to the office of P.W.1, the Branch Manager, Ann Transport Corporation, Johnsonpet, Salem at 11.00 a.m. and me

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P.W.1. The accused produced the appointment order Ex.P1 date 3.8.1996 and in that appointment order, it is stated that on th application of the accused, the accused is directed to join duty o 21.8.1996 at Johnsonpet depot for training. The appointment orde Ex.P1 is said to have been signed by P.W.3, the Deputy Manager, o behalf of the Managing Director, Anna Transport Corporation, Salem P.W.1, on receipt of Ex.P1, appointment order produced by th accused, suspected the genuineness of the said document an thereafter he informed P.W.3 about the same over phone. Afte informing P.W.3, P.W.1 sent the accused along with one Settu to th Head Office, with the appointment order, Ex.P1, produced before him P.W.3 verified the document Ex.P1 and came to the conclusion tha the said document Ex.P1 is not genuine. According to P.W.3, th signature found in Ex.P1 is not that of P.W.3, and someone migh have forged his signature. Thereafter, P.W.3, enquired the accused and it is claimed by P.W.3 that the accused ha written a letter Ex.P6 in his presence and signed the same. In tha letter Ex.P6, the accused admitted the offence and tendered apolog for the same. Thereafter, P.W.3 gave a report Ex.P2, date 21.8.1996 enclosing Ex.P6 letter said to have been written by th accused to Hasthampatti police station and also produced the accuse before the police station. P.W.5, the Sub-Inspector of Police Hasthampatti police station received the report Ex.P2 and registere the case in Cr.No.828/1996, for the offences under Sections 420 465, 468, 470 and 471 I.P.C., on 28.1.1996 at 5.00 p.m. Thereafter P.W.5 arrested the accused and seized the documents under Form-95 dated 25.7.1996. P.W.5 also sent the seized documents fo handwriting expert, through the Magistrate Court concerned.

6. P.W.6, the Sub-Inspector of Police, Hasthampatti polic station took up further investigation. He sent the specime signature of P.W.3 and the signature of P.W.3, contained in Ex.P appointment order, to the handwriting expert and then received th report of the Forensic Sciences Laboratory, Ex.P10, through th Magistrate court concerned. P.W.7 is the Head Clerk of the Judicia Magistrate Court No.3, Salem, and he speaks about the receipt o requisition of P.W.6 and sending the said request to the handwritin expert and also as to the receiving of the report from the Forensi Sciences Laboratory, Ex.P10. P.W.6, after completion o investigation, filed charge-sheet against the accused.

7. Heard the arguments advanced by Mr.S.Ashok Kumar, learne Senior Counsel appearing for the Revision Petitioner and that of th learned Government Advocate (Crl.Side).

8. Learned Senior Counsel appearing for the Revisio Petitioner/accused while assailing the judgment of conviction an sentence passed by the Courts below, vehemently contended that th prosecution has miserably failed to establish the guilt of th

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accused. Learned Senior Counsel also took me to the relevan materials available on record both oral evidence and the documentar evidence, namely, the Exhibits marked by the prosecution.

9. The main contention put forward by the learned Senio Counsel appearing for the Revision Petitioner is that the entir prosecution case is mainly based on the letter Ex.P6 said to hav been written by the accused, sitting in front of P.W.3 and in tha Ex.P6 letter, the accused has admitted the offences and tendere apology for the same. According to the learned Senior Counse appearing for the Revision Petitioner, the definite stand taken b the accused is that he has not written any such letter, much les Ex.P6 letter and the handwriting in Ex.P6 letter as well as th signature are also not that of him. It is the further contention o the learned Senior Counsel that the prosecution, for the reason best known to them, have chosen to get specimen signature and th handwriting of P.W.3 only and sent the same to the handwritin expert for his opinion. The specimen signature and the handwritin of the accused were not at all taken by the investigating agency Further, Ex.P10, the opinion of the Forensic Sciences Laboratory i to the effect that the signature and the handwriting found in Ex.P are not that of P.W.3. Learned Senior Counsel would contend tha the prosecution miserably failed to establish that the letter Ex.P was written and signed by the accused. Therefore, the learne Senior Counsel contended that under the above said circumstances there is absolutely no materials produced by the prosecution t connect the accused with the offences against him.

10. Per contra, learned Government Advocate (Crl. Side) contended that the prosecution seized and marked the so-calle appointment order, Ex.P1, which was produced by the accused, befor P.W.1. He also contended that according to P.W.3, the accused wa produced before him, through one of his subordinates, by Settu an the accused appeared before him and wrote Ex.P6, sitting in front o him. Therefore, it is the contention of the learned Governmen Advocate that the evidence of P.W.3 has to be believed, as, eithe P.W.3 or P.W.1 or any other official witnesses, have any animosit to falsely implicate P.W.3 in this case.

11. I have carefully considered the rival contentions of bot sides and also perused the materials available on record. Th undisputed fact remains in this case is that the accused is qualified engineer holding B.E. Degree and he has applied for B.E Graduate (Apprenticeship) post, to the Anna Transport Corporation Salem. It is also admitted by the prosecution that the accused ha sent representation to the Chief Minister's cell, Chennai. P.W. received the representation and he sent a reply, Ex.P5, to th accused stating that the case of the accused would be considered a and when the vacancy arises. It is relevant to be noted tha

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Ex.P1, the appointment order, said to have been produced by th accused, is a type-written one and that too in the letterhead o Anna Transport Corporation. There is absolutely no explanation fro the prosecution side as to how the letterhead of a State-owne Transport Corporation, named Anna Transport Corporation, has come t the hands of a third person, namely, the accused. On this aspect the prosecution wants to rely only on Ex.P6, the letter given by th accused to P.W.3, which was disputed by the accused. Th prosecution has no explanation at all as to how a letterhead o State-owned Transport Corporation was used by the accused. It i also relevant to be noted, at this juncture, that the accused, wh is a qualified engineer went and met the officials of Anna Transpor Corporation, namely, P.W.1, personally and produced the appointmen order, Ex.P1 along with the cover. P.W.1 has admitted that th accused produced the appointment order, Ex.P1, along with the cover It is also the case of P.W.1 that only on seeing the said cover, h got suspicion and he came to the conclusion that the appointmen order produced by the accused is not a genuine one. But unfortunately, P.W.1 has not produced the said cover during th course of investigation. The cover said to have been received b P.W.1 is a very vital document and the non-production of the same i fatal to the prosecution case. This court left with no othe alternative except to draw adverse inference against the prosecutio under Section 114(g) of Indian Evidence Act.

12. P.W.1, who claimed to have entertained doubt over Ex.P1 the appointment order, sent the accused along with one Settu t P.W.3. Further, the said settu also was not examined by th prosecution. P.W.3, the Deputy Manager, Anna Transport Corporation Salem has not stated in the chief-examination, whether Ex.P6 lette was written in his presence. He has simply stated that Ex.P6 lette was produced by the accused. But, in cross-examination, P.W.3 ha asserted that the accused has written Ex.P6 only sitting in front o him and signed the same in his presence. According to P.W.3, th accused was produced before him by 3.00 p.m. on 21.8.1996. But, th accused, according to P.W.1, met him at 11.00 a.m. on 21.8.1996 Thereafter, according to P.Ws.1 and 3, the accused was sent to th police station and P.W.5, received the report, only at 5.00 p.m. I is curious to note as to why these official witnesses have take nearly more than 5 Hrs., to give the report, to the police an produce the accused before them. Therefore, the whole version o P.Ws.1 and 3 is unbelievable and unacceptable. There is absolutel no explanation as to why they have taken so much time in giving th report, Ex.P2, to the police and producing the accused before them If P.Ws.1 and 3 had entertained doubt as to the genuineness o Ex.P1, appointment order, they could have immediately sent th accused to the police station and thereafter it is only for th police to enquire about the genuineness of Ex.P1. It is also th

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case of the prosecution, as per Ex.P6 letter said to have bee written by the accused, that Ex.P1, the appointment order was type in the letterhead of Anna Transport Corporation, in a typewritin institute at Salem. But, the Investigating Officer has not examine any person from the typewriting institute, to prove that Ex.P1 wa typed at the instruction of the accused. Therefore, there ar several infirmities and irregularities in the case of th prosecution, as narrated above. The courts below simply brushe aside and overlooked the same, which warrant the interference o this court.

13. Further, there is much force in the main argument advance by the learned Senior Counsel appearing for the Revisio Petitioner stating that the prosecution has miserably failed t prove that the handwriting and the signatures found in Ex.P6 lette are that of the accused. Therefore, according to the learned Senio Counsel, there is no material, except Ex.P6, to connect the accuse in this case, for the alleged offence of forgery. Only if th prosecution is able to prove the offence of forgery, the question o other offences under Sections 468, 471 and 420 read with 511 woul arise. Therefore, for the above said reasons, the entir prosecution case is to be rejected.

14. For all the reasons stated above, the conviction an sentence imposed on the accused by the courts below ar unsustainable and accordingly, they are set aside. This Revisio Petition is allowed. The fine amount deposited by the Revisio Petitioner/accused is ordered to be refunded. The bail bon executed by the Revision Petitioner/accused shall stand cancelled.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Judicial Magistrate-III, Salem.

2.Do-Thro' The Chief Judicial magistrate, Salem .

3.The Addl. District Sessions Judge, Salem, Fast Track Court -I, Salem.

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4.Do-Thro' The Principal District Sessions Judge, Salem.

5.The Superintendent, Central Prison, Salem.

6.The Public Prosecutor, High Court, Madras.104

7.The Sub Inspector of Police, Hasthampatti Police Station, Salem District.

+1cc to Mr.M.R.Jothimanian, Advocate(SR.49515)

NG(CO)
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